IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.20 OF 1997

IN

ARBITRATION PETITION NO.222 OF 1996

1.Meena Vijay Khetan & anr. ...Appellants

vs.

1.Olympus Superstructure Pvt. Ltd. & others. ...Respondents.

Mr.Deepak Chitnis i/b. M/s.Chitnis, Vaithy & Co., for Appellants.

Mr.A.M.Saraogi, for Respondent nos. 1 and 2.

Mr.Vimal Gupta, for Respondent no.3.

CORAM: D.K.DESHMUKH &

J.H. BHATIA, JJ.

DATED: 12th September, 2007.

P.C.:-

1. This contempt petition is filed alleging that the respondent nos. 2 and 3 are guilty of having committed criminal contempt. The conduct of the respondent nos.2 and 3 which according to the petitioners amounts to contempt is that on 13.8.1996 when the Arbitration Petition no.222 of 1996 was before the learned Single Judge of this Court for interim order, the respondent nos. 2 and 3 did not disclose to the Court that they had entered into the transaction with the respondent nos. 4 and 5 in relation to the property which was the subject matter of the arbitration petition no.222 of 1996. Arbitration petition no.222 of 1996 was filed by the petitioners under Section 9 of the Arbitration and Conciliation Act,1996 alleging that the petitioners had entered into an agreement with the respondent

no.1 company and that agreement was illegally terminated by the respondent no.1. According to the petitioners, there was an arbitration clause in that agreement, that clause was invoked, and therefore, under Section 9 of the Arbitration and Conciliation Act, an application was moved for appropriate interim orders. In that petition, there was an allegation made that the respondent no.1 is trying to create third party rights in the property. When the application came before the Court on 13.8.1996, by consent, ad-interim order in terms of prayer clause (a) of that arbitration petition was made and thereby the respondent no.1 company was restrained from creating third party rights in the property. According to the petitioners, however, before 13.8.1996 the respondent no.1 company and the respondent nos. 2 and 3 who are directors of respondent no.1 company had created third party rights in favour of respondent nos. 4 and 5 which fact was suppressed by the respondent no.2 and 3

and therefore, they have interfered with the course of justice and they are guilty of committing criminal contempt of this Court.

2. An affidavit has been filed by the respondent nos. 2 and 3. They have accepted that before 13.8.1996 third party rights were created by them in favour of respondent no.5 and according to them, they have committed a mistake in not disclosing this fact before this Court when this Court was hearing the arbitration petition for interim orders. They have tendered unconditional apology and they have also stated that they have purged the contempt by removing any third party rights that they might have created in favour of respondent no.5 by making payment to respondent no.5. They rely on the consent terms filed in Suit no.922 of 1997 and the order dated 18.9.1998 passed by the learned Single Judge of this Court. In the affidavit, the respondent no.2 has categorically stated that

whatever third party rights were created in favour of respondent no.5 have been removed because of the consent decreed passed by this Court in the suit no.922 of 1997. Perusal of those consent terms shows that whatever rights were created by the respondent no.1 in favour of respondent nos. 4 and 5 have been settled by those consent terms. Though, it appears that the respondent no.4 was not a party to that suit, there is a categorical statement made on oath in the affidavit filed by the respondent no.2 that whatever rights have been created also in favour of respondent no.4, have been settled. There is no rejoinder filed on behalf of the petitioners. The petitioners have also not produced any document by which, according to him, any rights in relation to the property were created in favour of respondent no.4. From the material available on record, it does appear that the respondent no.1 had created some rights in relation to the suit property in favour of

respondent nos. 4 and 5 before the arbitration petition came up before the Court for interim orders. The respondent nos. 2 and 3, however, suppressed that fact from the Court and allowed the Court to make an order restraining them from creating third party rights. This conduct in our opinion, clearly amounts to interfering with the course of justice and therefore, there is no doubt that the respondent nos. 2 and 3 are guilty of having committed criminal contempt of this Court. However, the respondent nos. 2 and 3 have submitted unconditional apology. They have also produced documents and they have also filed affidavit which shows that whatever rights they had created in favour of respondent nos. 4 and 5 have been removed by them.

3. Considering the law laid down by the Supreme Court in relation to the approach to be adopted by the Court in the matter of punishing the persons who are found to have committed

contempt of the Court, in our opinion, the following order would meet the ends of justice:-

It is held that the respondent nos. 2 and 3 have committed criminal contempt of this Court. However, the unconditional apology tendered by them is accepted. Therefore, there is no question of imposing any punishment on them. However, in our opinion, in the facts and circumstances of the case, it will be appropriate to direct the respondent nos. 2 and 3 to pay costs of this petition. The costs are quantified at Rs.15,000/-. The petition is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)